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82-682

IN THE

Supreme Court of the United States

October Term, 1982

No. . . . . . .

WILLIAM B. RICHARDSON,
Petitioner

v.

G. WILLIAM MILLER, Secretary of the Treasury,
STANSFIELD TURNER, Director, Central Intelligence,
JAMES T. McINTYRE, Jr., Director, Office of Management and Budget
JEROME KURTZ, Commissioner, Internal Revenue Service,
BERNARD J. MISKANIC, I.R.S. Officer, Greensburg, (Pa.) Office.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS

For the Third Circuit

No. 81-1392

WILLIAM B. RICHARDSON, *pro se*
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QUESTIONS PRESENTED

1. Does Title 31 USCA sect. 66b (a), which mandates that the Treasury publish for the President, the Congress and the Public full disclosure of financial operations of the government, give petitioner standing to proceed in protection of his civil rights, or of equal rights, and establish federal question jurisdiction (28 USC 1331 and 28 USC 1343 (4)) when defendants deny him the publication mandated and purposefully and intentionally falsify the Treasury's accounting and reporting?

2. Can a complaint be dismissed on the grounds of Sovereign Immunity or Lack of Standing in an action against federal officials under Title 28 USCA sect. 1331 based on the Constitution and alleging (1) injury in fact (2) violations of petitioner's Fourth and Fifth amendment rights (3) taxpayer standing (4) citizen standing (5) voter standing and (6) standing based on unenforced criminal laws?

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Legislative History

U.S. Congressional Code Service, Vol. 2, p. 3707 (1950) 10

REFERENCE TO OFFICIAL AND UNOFFICIAL OPINIONS

There is only one opinion in this case: officially reported as: *Richardson v. Miller,* 504 F. Supp. 1039 (W.D.Pa. 1980) ... A-13

The Memorandum of Dimissal (A-13) was based on the face of the Amended Complaint (A-5 to A-13). No oral argument below.

GROUNDS FOR SUPREME COURT JURISDICTION

The District Court's Memorandum of Dismissal (A-13) does not agree with case law applicable to the jurisdictional statutes invoked and the facts alleged by the petitioner when considering dismissal based on *federal court jurisdiction, sovereign immunity,* and *standing.*

The petitioner seeks to review the Judgment Order of the Third Circuit Court of Appeals entered April 28th, 1982 (A-21) affirming the Memorandum Order of the District Court (A-13) entered December 28th, 1980.

Rehearing was summarily denied by the Third Circuit Court en banc (A-23) and entered May 24th, 1982.

On August 20th, 1982, an Order extending time for filing the Petition for Certiorari to and including October 20th, 1982, was entered by Associate Justice *William J. Brennan. Jr.* (A-24).

The statutory provision for Supreme Court jurisdiction is Title 28 USC sect. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

All *constitutional provisions* and *statutes* are set out in the Appendix (A-1 to A-5) and will accommodate the reading of the Amended Complaint (A-5) and the Memorandum of the District Court (A-13).

The *statutes* referred to in the "Questions Presented" section of this Petition are set out in the Appendix at page A-3 (sects. 1331 and 1343(4)) and at page A-4 (sect. 66b(a)).

The appropriate citation of the *constitutional provisions* with corresponding page numbers in the Appendix is set out below:

Article 1 sect. 1 clause 1 ..... A-1
Article 1 sect. 7 ..... A-1
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The Statutes involved:

Title 26 USCA sect. 7421(a) A-2
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Title 50 USCA sect. 403j(b) A-5

STATEMENT OF CASE

Although the petitioner set out in his Amended Complaint (A-5) that he was proceeding under the basic jurisdictional statute Title 28 USC sect. 1331[1]; the statutorily dependent jurisdictional statutes Title 28 USC sects. 1340[1] and 1343(4)[1]; and the peripherally jurisdictional statutes Title 28 USC sects. 1361[1] and 2201[1]; the single opinion in this case to date (Memorandum of the District Court, p. A-13) treats the question of *federal question jurisdiction, sovereign immunity* and *standing* as though each operated independently against this petitioner and his Amended Complaint (A-5). Sect. 1331[1] was either misconstrued or not construed at all. The dismissal was based on a Rule 12b motion of the respondents.

Title 28 USC sect. 1331[1] incorporates the concept of liability of federal officials commensurate with the liability imposed on state officials under Title 28 USC sect. 1343(3).

Because of sect. 1331[1] invocation and the obvious federal thrust of the Amended Complaint, *federal question jurisdiction* should present no problem. Sect. 1340[1] could carry jurisdiction under its own weight because of the attack on the constitutionality of *Title 26 USC sect. 1 et seq* and because a federal lien was involved.

Sovereign immunity is likewise misconceived by the District Court and the Third Circuit because "the thrust of the claim" is *not* " —against the United States Treasury." No diminution of tax liability is claimed; only accurate tax liability consistent with the adjudication of the Tax Court.

Standing is clearly established by the Amended Complaint. Congress has the plenary power to extract any kind of reporting it deems necessary in implementing the constitutional provisions limiting the power of Congress to tax and spend and Congress has spoken in its *Title 31 statutes (Money & Finance)*, primarily in *Title 31 USC sect. 66b(a)*. See Appendix p. A-4 for 66b(a) and p. A-7 for para. 10 of Amended Complaint.

Statement of Case (cont.)

Congress legislated "full disclosure" of every agency's accounts in 1950.

Because of the allegations of *concrete injury* and *personal stake*, the Amended Complaint has established petitioner's *standing* to invoke (initially) sect. 1331[1], sect. 1340[1], and sect. 1343(4)[1] which, in turn, activate Title 28 USC sect. 1361[1] and Title 28 USC sect. 2201.[1] It seems unthinkable that this individual petitioner would never have standing to pursue an on-going fraudulent accounting and reporting scheme of the Executive in collusion with certain committees of Congress, but this seems to be the message from below even when the petitioner alleges particularized injury and injury as a member of a protected class.

[1] Jurisdictional statutes set out verbatim Appendix, p. A-3.

ARGUMENT

QUESTION PRESENTED NUMBER ONE

Does Title 31 USCA sect. 31 USCA sect 66b(a), which mandates that the Treasury publish for the President, the Congress and the Public full disclosure of financial operations of the government, give petitioner standing to proceed in protection of his civil rights, or of equal rights, and establish federal question jurisdiction (28 USC 1331 and 28 USC 1343(4)) when defendants deny him the publication mandated and purposefully and intentionally falsify the treasury's accounting and reporting?

Immunity from damages does not ordinarily bar equitable relief as well. *Wood v. Strickland,* 420 US 308 (1975) n. 6 p. 314.

The public interest requires decisions and action to enforce laws for the protection of the public. *Scheuer v. Rhodes,* 416 US 232, 241 (1974)

Title 31 USCA sect. 66b(a), (p A-4) directly protects the interest of the public: (1.) It guarantees them full disclosure of the financial operations of the federal government, and (2.) It guarantees them the same reports that go to the President and the Congress. (see para 10, Amended Complaint, p. A-7)

It was never intended that the Treasury keep more than one set of books; nor to report differently to the President or the Congress or the public.

With all its defects, delays and inconveniences, man has discovered no technique for long preserving free government except that the executive be under the law. *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579, 655 n. 37 (1952).

The entire issue of whether a private right of action can be accorded the petitioner in this case is founded on the proposition that public money illegally appropriated and unaccounted for, purportedly in the interest of National Security and Foreign Relations, can be used to punish a loyal American Citizen residing

permanently within the United States. Such a Citizen, has by executive fiat, been made the member of a *special* class which the statute (Title 31 USC 66b(a), (p. A-4) was designed to protect.

The Congressional Declaration of Policy is set out in Title 31 USCA sect 65(a): "The accounting of the Government provide full disclosure of the results of financial operations—"

The definition of "executive agency" is set out in Title 31 USCA section 65a: "—the term 'executive agency' means any executive department or independent establishment in the executive branch of the Government —" Exeptions are included but are not relevant to this case.

The Legislative History is set out under "Budget and Accounting Procedures Act of 1950" beginning at page 3707, Volume 2, 81st Congress, Second Session, 1950.

THE TAX CLAIM

A tax court decision is a declaratory judgment. The IRS must adhere strictly to the mandates of the decision and apply what they have previously collected to the credit of the taxpayer. There was no reason why the IRS billing should have been more than double the amount that the tax court decision would call for. This is concrete evidence that the petitioner is a target of clandestine elements.

The administrative remedy is not adequate. The District Court in its opinion admits (p. A-14) that "Jurisdiction may be present only in those situations in which 'under no circumstances could the Government ultimately prevail' on the tax claim." citing *Enochs v. Williams Packing Co.*, 370 U.S. 1, 5 (1962).

The purpose of the anti-injunction statute (26 USC 7421(a), (A-2)) and the tax refund provision (26 USC 7422 (a), (A-2)) and the exclusion in the Declaratory Judgment provision (28 USC 2201, (A-3) as to taxes is to prevent the Internal Revenue Service from becoming bogged down with lawsuits in regard to their own assessments and collection; also, to direct the taxpayer into the Tax

Court or to allow him to have a refund in the District Court later on when the taxpayer pays the IRS assessment if it is excessive. It is an entirely different matter when there has been a tax court decision. The IRS cannot play cat and mouse with the taxpayer after a tax court decision. They would not do so except where it was orchestrated by the intelligence division of the IRS. It is well known that this division has received clandestine assignments funded under the CIA Act. There is no question but that the deliberate overcharge in the case was aimed at harming the petitioner irreparably. This it would have done. The lien placed on his wages would have taken all but $50.00 from every paycheck and would have taken approximately eight months to pay it off. (p. A-10 Complaint)

The IRS, of course, has offices in Pittsburgh, 30 miles from Greensburg. The CIA has offices in Pittsburgh. Telephones (412) 281-4009 and (412) 391-7777.

QUESTION PRESENTED NUMBER TWO

Can a complaint be dimissed on the grounds of Sovereign Immunity or Lack of Standing in an action against federal officials under Title 28 USCA sect. 1331 based on the Constitution and alleging (1) injury in fact (2 violations of petitioner's Fourth and Fifth amendment rights (3) taxpayer standing (4) Citizen standing (5) voter standing and (6) standing based on unenforced criminal laws?

Injury In Fact: The petitioner alleges injury in fact in his Amended Complaint (para. 16, p. A-9). *Gladstone Realtors v. Village of Bellwood,* 441 US 91, 99 (1979). The District Court failed to comprehend that the petitioner was a target of the clandestine services as he alleged.

Violations of Petitioner's Fourth and Fifth Amendment Rights: A cause of action may be implied from a provision of the Constitution against Federal officials comparable to actions

against state officials under Title 42 USCA sect. 1983. Such has been held to arise under the Fourth Amendment (A-2). *Bivens v. Six Unknown Named Agents of the Fed Bur of Narcotics*, 403 US 388 (1971). Under the Fifth Amendment (A-2): *Davis v. Passman*, 442 US 228 (1979). Under the Eighth Amendment: *Carlson v. Green*, 446 US 14 (1980).

All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. *Butz v. Economu*, 438 US 478, 506 (1978).

Taxpayer Standing: Taxpayer standing, in the complaint, is based on violations of Article 1 sect. 8 clause 12, (A-2) and Article 1 sect. 9 clause 7, (A-2) which restricts the power of Congress to tax and spend. The petitioner has established a logical link between his status as taxpayer and the exercise of congressional power to tax and spend under Article 1 sect. 8 clause 1, (A-2). *Flast v. Cohen*, 392 US 83, 102 (1968). Likewise, the second aspect (in *Flast)* has been met; the taxpayer has shown a logical nexus between his status as taxpayer and the precise nature of the constitutional infringement. That is, he has shown that the challenged enactments (Title 26 USCA sect. 1 et seq and any tax law; Title 31 USCA sect. 1029 (A-4), a fiscal law; and Titles 50 USCA sects. 403f (a), (A-4) and 403j (a), (A-5) exceed specific constitutional limitations imposed upon congressional exercise of the taxing and spending power of Article 1 sect. 8 clause 1, (A-2). *Flast v. Cohen*, 392 US 83, 102, 103 (1968). (see Amended Complaint: para. 5, A-6; para. 6, A-6; para. 7, A-7; para. 9, A-7)

Citizen standing: A Citizen has standing consistent with the rule of taxpayer's standing to challenge a gross deviation from legislative procedure relative to passing laws, especially bills of appropriation, where the procedure is clearly defined in the Constitution (Article I sect. 7, (A-1) and where it is a clear limitation on the power of Congress to legislate (Article 1 sect. 1, (A-1). Congress approves through committees, without a clear majority of Congress and without the signature of the President, bills of appropriation for secret missions tacked on to other bills of

appropriation. These secret amounts, undisclosed to the majority of Congress, are later transferred under the CIA Act (Title 50 USCA sect. 403f (a) (A-1)). These amounts support missions known to and approved by certain privileged committees of Congress without knowledge or approval of a majority of Congress and without the President's signature thereon. There is no provision in our Constitution for Congress and the President to conduct domestic or foreign affairs in this manner.

See *Harrington v. Bush*, 553 F2d 190 (1977) at last column page 195 and first column page 196 where the funding scheme is described. This can be determined as fairly accurate since the respondents (government) substantially admitted this procedure in their briefs filed in the Third Circuit Court of Appeals. The implication was that such procedure was judicially confirmed and beyond attack. No where in petitioners Prayer for Relief does he ask that the court "compel the government to give him information on precisely how the CIA spends its funds." (Memorandum District Court: p. A-11). But he is convinced the total amounts transferred under the CIA Act must be honestly disclosed and the appropriations therefore fully considered by every member of Congress even if it is in secret session. This does not mean details on every expenditure (Title 50 USCA 403j (b), (A-5).

It is interesting to note in the *Harrington* case at page 196, Title 50 USC sect. 403j (b), (A-5) is incorrectly set out. The words as set out there were "such expenditure of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified." This should have read:

> '---such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

If the above had been correctly entered, there might not have been any need for note 15 page 196 indicating the court's frustration with the meaning of Title 50 USC sect. 403j (b). This statute is set out in the Appendix, p A-5.

At any rate, the CIA does not submit any vouchers relating to its operations even including operations within the United States; not-with-standing some such vouchers might be void of detail.

Voter Standing. The complaint's reference to Voter Standing is set out in paragraph 11 (p. A-8) and 12 (p. A-8) and 13 (p. A-8). Maintaining the effectiveness of one's vote is a subject for standing and for judicial determination in a federal court. *Baker v. Carr,* 369 US 186, 208 (1962).

Standing Based on Unenforced Criminal Laws: The Criminal Laws violated are set out in paragraph 19 (p. A-10) under the heading CRIMES CODE VIOLATION. Title 18 USCA sect. 643 is particularly applicable:

> "Whoever, being an officer, employee or agent of the United States of any department or agency thereof, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law is guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000.00 or imprisoned not more than one year, or both."

The expenditures of public money transferred from other agencies under the CIA Act simply are not reported and the host agency reports the transfers to the Treasury as expenditures. ***The credibility of every agency's expenditures in the federal government are thus affected*** making the Treasury's complete report false and fraudulent. All citizens are under an obligation to aid in enforcing the criminal laws. *Miranda v. Arizona,* 384 US 436, 481 (1966). A private remedy may be implicit in a statute not expressly providing one. *Cort v. Ash,* 422 US 66, 78 (1975).

CONCLUSION

That the petitioner has alleged a constitutional claim of sufficient substance to support federal jurisdiction under Title 28 USC sect. 1331, (A-3). Under such circumstance, a federal district court "---has power to consider other claims which might not provide an independent basis for federal jurisdiction." *Chapman v. Houston Welfare Rights Organization,* 441 US 600, 606 (1979).

That the petitioner may claim actual and punitive damages in a *Bivens* type (403 US 388) action against federal officials. *Carlson v. Green,* 446, US 14 (1980).

That the petitioner may opt to forego a jury trial and actual and punitive damages in deference to equitable and declaratory remedies of greater significance without diminution of his federal cause of action.

That the petitioner can invoke the District Court's authority to show that he personally has suffered some actual or threatened injury as a result of the putatively illegal or unconstitutional conduct of the defendants and that the injury fairly can be traced to the challenged action and is likely to be redressed by a favorable decision.

That the assertion of the District Court that Federal Question Jurisdiction was lacking is too anomalous to argue at length:

> " 'It is obvious---that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right. But as the very nature of the controversy was Federal, and, therefore, jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that the action was not one arising under the Constitution and laws of the United States.' *Swafford v. Templeton,* 185 US 487, 493. 'For it is well settled that the failure to state a proper

cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction.' *Bell v. Hood,* 327 US 678, 682" *Baker v. Carr,* 369 US 186, 199, 200 (1962).

That instead of a Rule 12b dismissal, an answer should have been required.

Respectfully submitted,

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